



NIXON & VANDERHYE, P.C.
8TH FLOOR
1100 NORTH GLEBE ROAD
ARLINGTON, VA 22201

Paper No. 7
COPY MAILED

MAR 18 2002

OFFICE OF PETITIONS

In re Application of
Takahashi, Yukino & Fukushima
Application No.: 09/702,828
Filed: November 1, 2000
Attorney Docket No.: 1858-23
For: AUTOMOBILE INTERIOR OR EXTERIOR
TRIM MATERIAL

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is a decision on the renewed petition under 37 CFR 1.47(a), filed December 18, 2001.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on November 1, 2000 without an executed oath or declaration and filing fees. Accordingly, on January 11, 2001, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration, filing fees, and a surcharge for their late filing. Applicants' petition under 37 CFR 1.47(a), filed April 11, 2001, was dismissed on July 19, 2001 for failure to establish that the representative of the deceased inventor could not be reached.

In response, on December 18, 2001, a petition for a two month extension of time and required fee, the petition fee, and the instant petition were filed. A declaration of facts of Hideo Nakano, an employee of the partial assignee of the invention, accompanied the petition. Mr. Nakano explains that the representative of the deceased inventor, Ms. Yuko Takahashi, had been located, but through her conduct, she has refused to join in the filing of the above-identified application.

A grantable petition under 37 CFR 1.47(a) requires

- (1) a petition including proof of the pertinent facts establishing that the joint inventor(s) refuses to join, or cannot be found or reached after diligent effort,
- (2) a proper oath or Declaration executed by the available joint inventor(s),
- (3) the fee of \$130 as specified in 37 CFR § 1.17(h), and
- (4) the last known address of the omitted inventor(s).

This petition lacks items (1), (2), and (4) above.

As to item (1), Applicants have failed to establish that the representative of the inventor has refused to sign the declaration. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events. The Office requires that the representative of the deceased inventor be provided with a complete copy of the application as filed. This includes the specification with claims, drawings, if any, and a declaration. See MPEP 409.03(d). Unless the representative of the deceased inventor is presented with a copy of the application papers, she

cannot attest that she has "reviewed and understands the application papers" and therefore cannot sign the declaration. Mr. Nakano's statement of facts does not establish that a complete copy of the application was mailed to Ms. Takahashi's last known address. Applicants have failed to establish that Ms. Takahashi was provided with a copy of the application papers. Accordingly, Rule 47 applicants have failed to show or provide proof that the representative of the deceased inventor has refused to sign the declaration.

Ms. Takahashi must have the complete application in her possession in order to make an informed decision as to whether she joins in its filing. When petitioner can show that Ms. Takahashi was mailed or received the complete application and that she either refused to sign the declaration or would not respond to the request that she sign the declaration, petitioners will have satisfied this requirement.

As to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 still has not been presented. Ms. Takahashi is being asked to join in the filing of the application in a representative capacity. Her information (name, residence, post office, nationality) must be included in a supplemental declaration.

As to item (4), a clear statement of the legal representative's last known address is missing and is required.

Regarding finances, petitioners submitted \$400.00 for a two month extension of time with the instant petition. However, petitioners were required to respond to the July 19, 2001 petition decision by September 19, 2001. The two month extension of time operated until November 19, 2001, but the instant petition was filed on December 18, 2001. Pursuant to petitioners' authorization, deposit account no. 14-1140 will be charged \$520.00, which is the difference between the fee for a three month extension of time, \$920.00, and the already submitted \$400.00 fee for a two month extension of time.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries should be directed to the undersigned at (703) 308-6712.



E. Shirene Willis
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy